THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.19189 and 21081 of 2005

19.7.2007

Between:

Smt.Mathsarasa Nagulamma, W/o.Narayana Raju

… Petitioner

AND

The Sub-Divisional Magistrate, Paderu (PO), Visakhapatnam District And others

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.19189 and 21081 of 2005

COMMON ORDER:

Though the interlocutory matters are listed today, as the controversy is in narrow compass, the matters were heard finally and are being disposed of by this common order.

W.P.No.19189 of 2005 (first writ petition, for brevity) is filed by a Member of Mandal Parishad Territorial Constituency of Gangaraju Madugula (G-Madugula, for short) Mandal, challenging the proceedings of the first respondent in Rc.No.1193/2005.B, dated 21.7.2005. By the said order, in exercise of powers under Section 133 of Criminal Procedure Code, 1973 (Cr.PC), first respondent directed public not to obstruct smooth running of weekly market near electrical substation behind the Office of Mandal Revenue Officer (MRO Office) in G-Madugula village. First respondent also prohibited assembly of persons in Patha Gangaraju Madugula (PG-Madugula) village. The basis for filing the first writ petition is that though the weekly market held on every Tuesday was shifted from PG-Madugula to G-Madugula, on a representation made by Ex-MLA, the District Panchayat Officer (DPO) in proceedings in Rc.No.1686/2005.A5, dated 15.8.2005, again directed to conduct weekly market at old place in PG-Madugula and, therefore, the first respondent could not have passed prohibitory order. W.P.No.21081 of 2005 (second writ petition) is filed by the Sarpanch of G-Madugula, challenging the proceedings of the DPO dated 15.8.2005 in Rc.No.1686/2005.A5, whereunder the shifting of market from G-Madugula to PG-Madugula was ordered.

The background of the case to the extent it is admitted by both the sides is as follows. PG-Madugula and other small habitats are hamlets of G-Madugula village and Panchayat. The headquarters of G-Madugula Gram Panchayat is also situated in G-Madugula village in addition to various Government Departments, Nationalised Banks,

Police Stations and volutary organizations. PG-Madugula and G-Madugula (Headquarters) are situated in a distance of 2.5 KMs. In the past, weekly market on Tuesday for the entire village was conducted on a place admeasuring Acs.1.85 in PG-Madugula. Over a period of time, population of the village increased from 30,000 to 50,000 and the land admeasuring Acs.1.85 where the weekly market was held occupied by 35 persons, who raised houses. The Gram Panchayat, G-Madugula, having realized this, thought it fit to shift weekly market from PG-Madugula to G-Madugula, so as to make it convenient for the traders and the public. An extent of Acs.11.32 situated near electrical sub-station behind MRO Office was identified. The advantages of having weekly market was discussed by the Gram Panchayat, G-Madugula, on 18.5.2005. The unanimous resolution was passed to shift the weekly market to the Government acquired the land admeasuring Acs.11.32 in survey Nos.8/1 (Ac.1.00), 8/2 (Ac.0.55), 8/3 (Acs.1.61), 9/1 (Acs.5.00), 9/2 (Acs.1.36) and 9/3 (Acs.1.80). On 07.4.2005, Mandal Parishad, G-Madugula, also passed resolution by all the members present in the meeting on that day.

In pursuance of resolutions by Gram Panchayat, G-Madugula and Mandal Parishad, G-Madugula, weekly market started functioning near electrical sub-station behind MRO Office, G-Madugula. At that time, Mathasarasa Bala Raju, Ex-MLA, and 15 others submitted a representation to the District Collector. It appears that the District Collector orally directed the DPO to continue to hold the weekly market at the old place. Accordingly, the impugned order in W.P.No.21081 of 2005 was passed by the DPO. Even before it was done, the Sub-Divisional Magistrate, Paderu, passed orders on 21.7.2005, which is impugned in the first writ petition.

Learned Counsel for the petitioner in the first writ petition submits that the site where new market is proposed, is not congenial for a market place as its terrain is not uniform and it would be difficult for loading and unloading operations. He also submits that the new place is at a distance of 2 KMs from G-Madugula and therefore shifting of 100 year old market to new place is illegal and arbitrary. He also brought to the notice of this Court a representation made by villagers of G-Madugula dated 14.3.2005 submitted to Sub-Collector, Paderu, on which the MRO endorsed not to shift the market. **Opposing** the writ petition, learned Assistant Government Pleader for Panchayat Raj and learned Counsel for respondents 2 and 3 (Counsel for the petitioner in W.P.No.21081 of 2005) submits that it is within the exclusive domain of the Gram Panchayat to select and earmark a particular place for weekly market and the MPTC Member has no locus to question the same. Secondly, they contend that when the matter is placed before

the Mandal Parishad, ten members agreed to shift the market to the site admeasuring Acs.11.32 situated behind MRO Office near AP Transco. Therefore, there is no illegality in the action initiated by G-Madugula Gram Panchayat.

It is within the powers of Gram Panchayat to provide for opening and maintenance of public markets. A reading of Section 46 (xxiii) and Section 104 of A.P. Panchayat Raj Act, 1994 (the Act, for brevity) would show that it is within the exclusive domain of the Gram Panchayat to provide places for public markets. But in the event of closing a public market, sanction of the Commissioner is required. Section 104 of the Act reads as under.

> **104. Public markets**:- (1) The gram panchayat may provide places for use as public markets and, with the sanction of the Commissioner, close any such market or part thereof.
>
> (2) Subject to such rules as may be prescribed the gram panchayat may levy one or more of the following fees in any public market at such rates, not exceeding the maximum rates, if any prescribed in this behalf, as the gram panchayat may think fit-
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> (a) fees for the use of, or for the right to expose goods for sale in, such market;
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> (b) fees for the use of shops, stall, pens or stands in such markets;
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> (c) fees on vehicles including motor vehicles as defined in the Motor Vehicles Act, 1988 or pack-animals bringing or persons carrying, any goods for sale in such markets;
>
> (d) fees on animals brought for sale into or sold in such markets;
>
> (e) licence fees on brokers, commission agents, weighmen and measures practicing their calling in such market.

Apart from providing places for public markets under Section 104(1) of the Act, it is within the exclusive jurisdiction of the Gram Panchayat to levy fee in public markets at such rates not exceeding the maximum rates prescribed by the Rules. Therefore, a lone MPTC member or a lone member of the Gram Panchayat has no say in the matter. In this case, G-Madugula Gram Panchayat as well as G-Madugula Mandal Parishad passed resolutions for shifting the old market from PG-Madugula to G-Madugula near electrical sub-station behind MRO Office. In the affidavit accompanying WP No.21086 of 2006 filed by the Sarpanch of the village, the reasons for shifting have been graphically averred and there is no dispute on this. The first writ petition itself is filed on the basis of a communication dated 15.8.2005 from the DPO, which is allegedly issued on oral directions of the District Collector. Having regard to the provisions of Section 46 (xxiii)

and 104(1) of the Act, the District Collector could not have directed to continue the weekly market at old place.

For the above reasons, WP No.21081 of 2005 is allowed and WP No.19189 of 2005 is dismissed. In the circumstances, however, there shall be no order as to costs.

(**V.V.S.RAO, J**)

July 19, 2007.
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